IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 287 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)

Versus

JAYANTILAL D PATEL - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 21/04/2006

CAV JUDGMENT

(Per : HONOURABLE MS.JUSTICE H.N.DEVANI)

1.The Income Tax Appellate Tribunal, Ahmedabad

Bench “A” has referred the following two questions under Section 256(1) of the Income Tax Act, 1961 (the Act) at the instance of Commissioner of Income Tax.

> “[1] Whether, the Appellate Tribunal is right in law and on facts in directing the Income Tax Officer to exclude 50% share of profit of Biren Nandish Trust from the income of the assessee?
>
> [2] Whether, the Appellate Tribunal is right in law and on facts in holding that the provisions of section 60 of the Income Tax Act cannot be invoked?”

2. The assessment year is 1983-84 and the corresponding accounting period is Samvat Year 2038.

3.Heard Mr.Manish R. Bhatt, the learned senior standing counsel for the applicant. Though served, there is no appearance on behalf of the respondent assessee.

4.As can be seen seen from the impugned order dated 26th September, 1991 passed by the Tribunal, the Tribunal has merely followed its earlier decision in assessee's own case for assessment years 1979-80 to 1982-83. The aforesaid order of the Tribunal had been carried before this Court by way of Income Tax Reference No.212 of 1995, which has been decided by judgement and order of even date and the issue has been concluded in favour of the assessee and against the revenue. In the circumstances, it is not necessary to set out the facts and contentions in detail.

5.For the reasons stated in the judgement and

order of even date passed in Income Tax Reference No.212 of 1995, the questions referred are answered in the affirmative i.e. in favour of the assessee and against the revenue.

6.The reference stands disposed of accordingly. There shall be no order as to costs.

[D.A.MEHTA, J.]

[HARSHA DEVANI, J.]

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